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SENATE BILL 1058

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Linda M Lopez

AN ACT

**RELATING TO PUBLIC EMPLOYMENT; ALLOWING NEGOTIATION OF
COLLECTIVE BARGAINING AGREEMENTS THAT CONFLICT WITH STATE LAW
ONLY WHEN THEIR ENFORCEMENT IS SUBJECT TO CHANGES IN STATE LAW;
REQUIRING THAT COLLECTIVE BARGAINING AGREEMENT TERMS PREVAIL
WHEN IN CONFLICT WITH PERSONNEL BOARD RULES; ESTABLISHING
REQUIREMENTS FOR AN EMPLOYEE'S RIGHT TO APPEAL OR FILE A
GRIEVANCE PROCEDURE.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 10-7E-17 NMSA 1978 (being Laws 2003,
Chapter 4, Section 17 and Laws 2003, Chapter 5, Section 17) is
amended to read:**

"10-7E-17. SCOPE OF BARGAINING. --

**A. Except for retirement programs provided pursuant
to the Public Employees Retirement Act or the Educational**

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1 Retirement Act, public employers and exclusive representatives:

2 (1) shall bargain in good faith on wages,
3 hours and all other terms and conditions of employment and
4 other issues agreed to by the parties. However, neither the
5 public employer nor the exclusive representative shall be
6 required to agree to a proposal or to make a concession; and

7 (2) shall enter into written collective
8 bargaining agreements covering employment relations.

9 B. The obligation to bargain collectively imposed
10 by the Public Employee Bargaining Act shall not be construed as
11 authorizing a public employer and an exclusive representative
12 to enter into an agreement that is in conflict with the
13 provisions of any other statute of this state, unless the
14 public employer and the exclusive representative understand
15 that the agreement only will become effective if the applicable
16 law is amended by the legislature. In the event of conflict
17 between the provisions of any other statute of this state and
18 an agreement entered into by the public employer and the
19 exclusive representative in collective bargaining, the statutes
20 of this state shall prevail.

21 C. Payroll deduction of the exclusive
22 representative's membership dues shall be a mandatory subject
23 of bargaining if either party chooses to negotiate the issue.
24 The amount of dues shall be certified in writing by an official
25 of the labor organization and shall not include special

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1 assessments, penalties or fines of any type. The public
2 employer shall honor payroll deductions until the authorization
3 is revoked in writing by the public employee in accordance with
4 the negotiated agreement and for so long as the labor
5 organization is certified as the exclusive representative.

6 During the time that a board certification is in effect for a
7 particular appropriate bargaining unit, the public employer
8 shall not deduct dues for any other labor organization.

9 D. The scope of bargaining for representatives of
10 public schools as well as educational employees in state
11 agencies shall include, as a mandatory subject of bargaining,
12 the impact of professional and instructional decisions made by
13 the public employer.

14 E. An impasse resolution or an agreement provision
15 by the state and an exclusive representative that requires the
16 expenditure of funds shall be contingent upon the specific
17 appropriation of funds by the legislature and the availability
18 of funds. An impasse resolution or an agreement provision by a
19 public employer other than the state or the public schools and
20 an exclusive representative that requires the expenditure of
21 funds shall be contingent upon the specific appropriation of
22 funds by the appropriate governing body and the availability of
23 funds. An agreement provision by a local school board and an
24 exclusive representative that requires the expenditure of funds
25 shall be contingent upon ratification by the appropriate

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1 governing body. An arbitration decision shall not require the
2 reappropriation of funds.

3 F. An agreement shall include a grievance procedure
4 to be used for the settlement of disputes pertaining to
5 employment terms and conditions and related personnel matters.
6 The grievance procedure shall provide for a final and binding
7 determination. The final determination shall constitute an
8 arbitration award within the meaning of the Uniform Arbitration
9 Act; such award shall be subject to judicial review pursuant to
10 the standard set forth in the Uniform Arbitration Act. The
11 costs of an arbitration proceeding conducted pursuant to this
12 subsection shall be shared equally by the parties.

13 G. The following meetings shall be closed:

14 (1) meetings for the discussion of bargaining
15 strategy preliminary to collective bargaining negotiations
16 between the public employer and the exclusive representative of
17 the public employees of the public employer;

18 (2) collective bargaining sessions; and

19 (3) consultations and impasse resolution
20 procedures at which the public employer and the exclusive
21 representative of the appropriate bargaining unit are present. "

22 Section 2. [NEW MATERIAL] PERSONNEL BOARD RULES--CONFLICT
23 WITH COLLECTIVE BARGAINING AGREEMENTS. --In the event of a
24 conflict between a rule promulgated by the personnel board and
25 the terms of a collective bargaining agreement negotiated

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1 pursuant to the Public Employee Bargaining Act, the terms of
2 the collective bargaining agreement shall prevail.

3 Section 3. Section 10-9-18 NMSA 1978 (being Laws 1980,
4 Chapter 47, Section 2, as amended) is amended to read:

5 "10-9-18. APPEALS BY EMPLOYEES TO THE BOARD--FILING OF
6 GRIEVANCE. --

7 A. An employee who is dismissed, demoted or
8 suspended may, within thirty days after the dismissal, demotion
9 or suspension, pursue only one of the following options:

10 (1) the employee may appeal to the board. The
11 appealing employee and the agency whose action is reviewed have
12 the right to be heard publicly and to present facts pertinent
13 to the appeal; or

14 (2) the employee may file a grievance in
15 accordance with an applicable collective bargaining agreement
16 negotiated pursuant to the Public Employee Bargaining Act.

17 B. An employee has exercised the employee's right
18 to appeal or file a grievance pursuant to Subsection A of this
19 section when the employee timely files a notice of appeal
20 pursuant to the board's procedures or files a grievance
21 pursuant to the collective bargaining agreement's grievance
22 procedure, whichever occurs first.

23 [~~B.~~] C. An applicant denied permission to take an
24 examination or who is disqualified may appeal to the board.

25 [~~C.~~] D. The technical rules of evidence shall not

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1 apply to appeals to the board.

2 ~~[D-]~~ E. A record shall be made of the hearing,
3 which shall be transcribed if there is an appeal to the
4 district court. Costs of the transcripts, including one copy
5 for the board, shall be paid initially by the agency. The cost
6 of the transcripts may be assessed by the court to the losing
7 party on appeal.

8 ~~[E-]~~ F. The board may designate a hearing officer
9 who may be a member of the board or any qualified state
10 employee to preside over and take evidence at any hearing held
11 pursuant to this section. The hearing officer shall prepare
12 and submit to the board a summary of the evidence taken at the
13 hearing and proposed findings of fact. The board shall render
14 a decision, which shall include findings of fact and
15 conclusions of law.

16 ~~[F-]~~ G. If the board finds that the action taken by
17 the agency was without just cause, the board may modify the
18 disciplinary action or order the agency to reinstate the
19 appealing employee to his former position or to a position of
20 like status and pay. Every consideration shall be given to
21 placing the appealing employee in the same geographical
22 location in which he was employed prior to the disciplinary
23 action. The board may recommend that the appealing employee be
24 reinstated by an agency other than the one who disciplined the
25 appealing employee. When the board orders an agency to

